

United States Senate  
WASHINGTON, DC 20510

February 2, 2024

**VIA ELECTRONIC TRANSMISSION**

The Honorable Andrea Gacki  
Director  
Financial Crimes Enforcement Network

Dear Director Gacki:

We write to you with concerns about the Financial Crimes Enforcement Network's (FinCEN) implementation of the Anti-Money Laundering (AML) Whistleblower Improvement Act.<sup>1</sup> The core program was first enacted over three years ago in the Corporate Transparency Act (CTA) and subsequently strengthened by AML whistleblower provisions enacted into law on December 23, 2022, as part of the Consolidated Appropriations Act of 2023.<sup>2</sup> Congress passed this bipartisan legislation and its expansion to incentivize whistleblowers to report sanctions violations and hold money launderers accountable. We were proud to introduce and pass this legislation because it provides vital support to U.S. law enforcement to enforce sanctions and anti-money laundering statutes and protect our national security interest. Indeed, in March 2022, former FinCEN Acting Director Himamauli Das stated that FinCEN was "accepting whistleblower tips while we work towards the development of a more formal tip intake system" and "FinCEN looks forward to creating a robust whistleblower program..."<sup>3</sup> However, we are concerned about FinCEN's significant delays in fully implementing this law.

Even though the initial law was enacted over three years ago, FinCEN has failed to establish a dedicated, public website for its whistleblower program. Specifically, FinCEN has yet to create a website to allow potential whistleblowers to submit claims or tips; with the types of whistleblower claims that can be reported; eligibility requirements for awards; or statistics about the whistleblower program and office. In fact, with respect to reporting tips, FinCEN's current website tells potential whistleblowers the *exact opposite*, stating that "the use of [FinCEN's] hotline is for financial institutions only. Private citizens wishing to report criminal

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<sup>1</sup> P.L. No. 117-328, 136 STAT. 4459, 5536-38.

<sup>2</sup> *Id.*; P.L. No. 116-283.

<sup>3</sup> FinCEN, *Prepared Remarks of FinCEN Acting Director Himamauli Das During NYU Law's Program on Corporate Compliance and Enforcement*, Press Release (March 25, 2022) <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-acting-director-himamauli-das-during-nyu-laws-program>.

activity should contact law enforcement in their area.”<sup>4</sup> Moreover, FinCEN has yet to publish a Notice of Proposed Rulemaking to govern the whistleblower program. This is unacceptable.

Whistleblowers could play a crucial role in providing critical information to help U.S. law enforcement investigate and prosecute violations of our nation’s sanctions and anti-money laundering laws that implicate our national security.<sup>5</sup> AML whistleblowers could potentially report violations involving authoritarian regimes, such as Iran, Russia, and North Korea, as well as individuals associated with transnational criminal organizations and terrorist organizations.<sup>6</sup> Thus, it is critically important FinCEN establish confidentiality during investigations and secure pathways for whistleblowers to report tips or make claims. Given these circumstances, we also encourage FinCEN to give whistleblowers flexibility regarding when and how they may report and be eligible to receive rewards. These procedures should be clear and consistent, giving whistleblowers assurances that they will be protected before they take the risk to come forward. If barriers continue to prevent whistleblowers from reporting sanctions and anti-money laundering violations, it will significantly hamper our nation’s ability to bring enforcement actions and strengthen our national security interests.<sup>7</sup>

It is well established that whistleblower incentive programs are powerful tools to prevent, detect, and prosecute criminal misconduct, wrongdoing, and fraud.<sup>8</sup> Therefore, it is essential FinCEN prioritize the full implementation of the AML whistleblower program. So that Congress may conduct objective and independent oversight concerning FinCEN’s implementation of the

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<sup>4</sup> Financial Crimes Enforcement Network’s Resource Center, *FinCEN Resource Center*, (last visited Feb. 2, 2024) <https://www.fincen.gov/fincen-resource-center>.

<sup>5</sup> Jason Zuckerman and Mathew Stock, *Financial Incentives for Sanctions Evasion Whistleblowers Supercharge Sanctions Enforcement and Strengthen National Security*, *The National Law Review* (Dec. 4, 2023) <https://www.natlawreview.com/article/financial-incentives-sanctions-evasion-whistleblowers-supercharge-sanctions>.

<sup>6</sup> Poppy Alexander and Caleb Hayes-Deats, *FinCEN’s Whistleblower Program Sharpens Focus on Money Launderers*, *Bloomberg Law* (Feb. 7, 2023) <https://news.bloomberglaw.com/us-law-week/fincens-whistleblower-program-sharpens-focus-on-money-launderers>; see U.S. Department of the Treasury, Office of Foreign Assets Control, *OFAC Settles with Construction Specialties Inc. for \$660,594 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations*, Press Release (Aug. 16, 2023) <https://ofac.treasury.gov/media/932086/download?inline>; U.S. Department of the Treasury, Office of Foreign Assets Control, *Sanctions Programs and Country Information*, (last visited Feb. 2, 2024) <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

<sup>7</sup> Kate Reeves, *Fighting Transnational Corruption: Why the Treasury Department Must Make Awards More Accessible to Whistleblowers in its AML Whistleblower Act Regulations*, *The National Law Review* (Jul. 26, 2023) <https://www.natlawreview.com/article/fighting-transnational-corruption-why-treasury-department-must-make-awards-more>.

<sup>8</sup> See Mengqi Sun, *Lawyers Expect More Anti-Money-Laundering Whistleblowers Thanks to Legislation*, *The Wall Street Journal* (Jan. 11, 2023) <https://www.wsj.com/articles/lawyers-expect-more-anti-money-laundering-whistleblowers-thanks-to-legislation-11673469757>; U.S. Securities and Exchange Commission, Office of the Inspector General, *Assessment of the SEC’s Bounty Program*, Report No. 474 (Mar. 29, 2010) <https://www.sec.gov/files/474.pdf>; Jason Zuckerman and Matt Stock, *One Billion Reasons Why The SEC Whistleblower-Reward Program Is Effective*, *Forbes* (Jul. 8, 2017) <https://www.forbes.com/sites/realspin/2017/07/18/one-billion-reasons-why-the-sec-whistleblower-reward-program-is-effective/?sh=799ed3f53009>.

AML whistleblower program, please provide answers to the following no later than February 23, 2024.

1. Regarding FinCEN's implementation of the AML whistleblower program:
  - a. Why has FinCEN yet to fully implement the whistleblower program?
  - b. When will FinCEN publish its Notice of Proposed Rulemaking? Provide specific dates.
  - c. When will the whistleblower incentive program be fully implemented? Provide specific dates.
2. Regarding the creation of a public website dedicated to the AML whistleblower program:
  - a. Why has FinCEN failed to establish a public website dedicated to the whistleblower program that provides information about eligibility, statistics, and allows for the submission of tips or claims?
  - b. When will the website be published? Provide specific dates.
3. Regarding the Financial Integrity Fund, from its establishment to the present, for each month provide:
  - a. The total amount deposited into the Fund;
  - b. The number of whistleblower awards made;
  - c. The amount of each whistleblower award;
  - d. The time it took to pay each whistleblower award;
  - e. The average time to pay whistleblower awards; and
  - f. When FinCEN anticipates the Fund will reach the cap.
4. Regarding the AML whistleblower program, from its establishment to the present, for each month provide:
  - a. The number of tips received;
  - b. The number of tips reviewed and pending review;
  - c. The number to tips referred to OFAC and the Justice Department; and
  - d. The investigative status of each referral.
5. Has FinCEN met with other whistleblower offices, such as the Commodities and Futures Trading Commission and SEC whistleblower offices, for guidance on establishing the AML whistleblower program?
  - a. If not, why not?
  - b. If yes, provide the name of the whistleblower office, date of the meetings, and summary of topics discussed.

Thank you for your prompt review and responses. If you have any questions, please contact our staff.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget



Elizabeth Warren  
United States Senator



Raphael Warnock  
United States Senator